



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/539,107	03/30/2000	Edward A. Hubbard	Bay 3 : 008	7866

7590 09/08/2003

Brian W Peterman
O'Keefe Egan & Peterman
1101 Capital of Texas Highway South
Building C Suite 200
Austin, TX 78746

EXAMINER

MASTRACCI, DARYL R

ART UNIT	PAPER NUMBER
----------	--------------

2155

DATE MAILED: 09/08/2003

//

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/539,107

Applicant(s)

HUBBARD, EDWARD A.

Examiner

Daryl R Mastracci

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 6, 7, 10. 6) ☐ Other: _____

DETAILED ACTION

Claims 1-24 are pending in this Office Action.

Information Disclosure Statement

The information disclosure statements filed in Paper No. 4, 6, 7, 9, and 10 have been considered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-24 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 6,615,166 B1 issued to Guheen et al. ("Guheen").

With respect to claim 1, Guheen teaches a method of distributing back-up data in a network, comprising: providing a server system (col. 96, lines 12-16; col. 162, lines 59-67); coupling the server system to a network, the network being configured to be coupled to distributed devices (Fig. 1AB, 1AD, 1AF, 1AJ, 1AL, 1AM); and utilizing the server system to distribute data back-up workloads across a plurality of the distributed devices (Fig. 4; col. 138, line 60- col. 139, line 2; col. 142, lines 42-57; col. 143, lines 51-56; col. 145, lines 43-49).

With respect to claim 2, Guheen teaches the method of claim 1, wherein the network comprises an Internet or an intranet (Fig. 1AB, 1AD, 1AM).

With respect to claim 3, Guheen teaches the method of claim 1, wherein the network comprises a wireless network (col. 225, lines 30-32).

With respect to claim 4, Guheen teaches the method of claim 3, wherein the distributed devices comprise computer systems having excess file storage capacity (col. 93, lines 5-10; col. 142, lines 42-57; col. 143, lines 11-24).

With respect to claim 5, Guheen teaches the method of claim 4, wherein the back-up data workloads include redundant workloads so that any given portion of the back-up data is stored on at least two different computer systems (col. 144, lines 33-41).

With respect to claim 6, Guheen teaches the method of claim 3, further comprising identifying at least one workload capability for a plurality of the distributed devices and utilizing the identified at least one workload capability to schedule back-up data workloads for the distributed devices (col. 138, line 60- col. 139, line 2; col. 142, lines 42-57; col. 143, lines 51-56; col. 145, lines 43-49).

With respect to claim 7, Guheen teaches the method of claim 1, wherein the utilizing step further comprises forming a resulting index stored on the server system (col. 262, lines 5-7).

With respect to claim 10, Guheen teaches the method of claim 1, further comprising identifying at least one workload capability for a plurality of the distributed devices and utilizing the identified at least one workload capability to schedule data

back-up workloads for the distributed devices (col. 138, line 60- col. 139, line 2; col. 142, lines 42-57; col. 143, lines 51-56; col. 145, lines 43-49).

With respect to claim 11, Guheen teaches the method of claim 10, wherein the workload capability is excess file storage capacity (col. 93, lines 5-10; col. 142, lines 42-57; col. 143, lines 11-24).

With respect to claim 12, Guheen teaches the method of claim 11, wherein the network is an intranet (col. 15; col. 17).

With respect to claim 14, Guheen teaches a distributed back-up processing system, comprising: a first system coupled to a network, the network being configured to be coupled to distributed devices (Fig. 1AB, 1AD, 1AF, 1AJ, 1AL, 1AM); and a workload database coupled to the server system storing workloads for data back-up, the first system scheduling the data back-up workloads for the distributed devices to back-up data coupled to the network (Fig. 4; col. 138, line 60- col. 139, line 2; col. 142, lines 42-57; col. 143, lines 51-56; col. 145, lines 43-49).

With respect to claim 15, Guheen teaches the system of claim 14, wherein the network comprises an Internet or an intranet (Fig. 1AB, 1AD, 1AM).

With respect to claim 16, Guheen teaches the system of claim 14, wherein the network comprises a wireless network (col. 225, lines 30-32).

With respect to claim 17, Guheen teaches the system of claim 14, wherein the distributed devices comprise computer systems having excess file storage capacity (col. 93, lines 5-10; col. 142, lines 42-57; col. 143, lines 11-24).

With respect to claim 18, Guheen teaches the system of claim 17, wherein the back-up data workloads include redundant workloads so that any given portion of the back-up data is stored on at least two different computer systems (col. 144, lines 33-41).

With respect to claim 19, Guheen teaches the system of claim 14, further comprising a capabilities database coupled to the first system storing workload capabilities for a plurality of the distributed devices, the first system utilizing the workload capabilities to schedule data back-up workloads for the distributed devices (col. 138, line 60- col. 139, line 2; col. 142, lines 42-57; col. 143, lines 51-56; col. 145, lines 43-49).

With respect to claim 23, Guheen teaches the system of claim 10, wherein the network is an intranet (col. 15; col. 17).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 9, 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guheen in view of "Economic Oriented CPU Sharing System for the Internet," by Ori Regev, Institute of Computer Science, The Hebrew University of Jerusalem, July, 1998 ("Regev").

With respect to claim 8, Guheen teaches the method of claim 1, but does not explicitly state further comprising providing an incentive to couple the distributed devices to the server system through the network so that the distributed devices are capable of performing a portion of the data back-up workload. Regev teaches providing incentives to computer users for the use of their idle computer time (pages 6-10). It would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the incentives of Regev into Guheen. One of ordinary skill in the art would do this in order to motivate owners of computer processors to volunteer their computing time and power. This is done to entice computer users to volunteer their extra computing power to a larger server in need of the extra computing capabilities.

With respect to claim 9, Guheen and Regev teach the method of claim 8, but do not explicitly state wherein the incentive comprises entries in a sweepstakes. However, Regev does teach the incentives being any one of the electronic currency schemes. It would have been obvious to a person of ordinary skill in the art at the time of the invention that entry in a sweepstakes is part of the vast electronic currency schemes currently provided by web servers and other servers in a distributed environment. Therefore, one of ordinary skill would know that entry in a sweepstakes is one version of an electronic currency scheme.

With respect to claim 20, Guheen teaches the system of claim 14, but does not explicitly state further comprising an incentive database coupled to the first system storing incentive values for a plurality of the distributed devices, the incentive values

being provided to couple the distributed devices to the server system through the network so that the distributed devices are capable of performing a portion of the data back-up workload. Regev teaches providing incentives to computer users for the use of their idle computer time (pages 6-10). It would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the incentives of Regev into Guheen. One of ordinary skill in the art would do this in order to motivate owners of computer processors to volunteer their computing time and power. This is done to entice computer users to volunteer their extra computing power to a larger server in need of the extra computing capabilities.

With respect to claim 21, Guheen and Regev teach the system of claim 20, but do not explicitly state wherein the incentive comprises entries in a sweepstakes. However, Regev does teach the incentives being any one of the electronic currency schemes. It would have been obvious to a person of ordinary skill in the art at the time of the invention that entry in a sweepstakes is part of the vast electronic currency schemes currently provided by web servers and other servers in a distributed environment. Therefore, one of ordinary skill would know that entry in a sweepstakes is one version of an electronic currency scheme.

With respect to claim 22, Guheen and Regev teach the system of claim 20, further comprising a capabilities database coupled to the first system storing workload capabilities for a plurality of the distributed devices, the first system utilizing the workload capabilities to schedule data back-up workloads for the distributed devices

(Guheen: col. 138, line 60- col. 139, line 2; col. 142, lines 42-57; col. 143, lines 51-56; col. 145, lines 43-49).

Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guheen in view of US Patent No. 6,263,358 B1 issued to Lee et al. ("Lee").

With respect to claim 13, Guheen teaches the method of claim 1, but does not explicitly state further comprising transferring an agent to the distributed devices, the agent being capable of managing the data back-up workload. Lee teaches the use of distributed co-operating agents in a distributed computing environment that control, monitor, and/or manage a process or application (Fig. 1-4; col. 1, lines 21-28; col. 2, lines 50-59; col. 6, line 60- col. 7, line 4). It would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the agents taught by Lee into Guheen. One of ordinary skill in the art would do this in order to have a program specifically designed to manage data backup. This is beneficial in designating tasks in a distributed computing environment wherein many tasks need to be processed simultaneously.

With respect to claim 24, Guheen teaches the system of claim 14, but does not explicitly state further comprising transferring an agent to the distributed devices, the agent being capable of managing the data back-up workload. Lee teaches the use of distributed co-operating agents in a distributed computing environment that control, monitor, and/or manage a process or application (Fig. 1-4; col. 1, lines 21-28; col. 2, lines 50-59; col. 6, line 60- col. 7, line 4). It would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the agents taught by

Lee into Guheen. One of ordinary skill in the art would do this in order to have a program specifically designed to manage data backup. This is beneficial in designating tasks in a distributed computing environment wherein many tasks need to be processed simultaneously.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daryl R Mastracci whose telephone number is (703) 305-0325. The examiner can normally be reached on Monday-Friday (8-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain T Alam can be reached on (703) 308-6662. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.



drm
September 3, 2003



HOSAIN ALAM
SUPERVISORY PATENT EXAMINER